

**MORALITY IN MEDIA, INC.**

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April 7, 1997

Office of the Secretary
Federal Communications Commission
1919 M Street N.W. Room 222
Washington, D.C. 20554

Re: MM Docket No. 93-25
Implementation
of Section 25
of the 1992
Cable Act-DBS
Service Obligations

Dear Sir:

We understand the requirement for filing
comments requires an original and four copies.

If possible, we would like the
commissioners to have copies of our comments.
With this in mind, we file an original and
nine copies and ask that the additional copies
be sent to the Commissioners.

Sincerely,

Paul J. McGeady
General Counsel

PJM/tp

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Docket No. 93-25
Implementation of
Section 25 of the
Cable Television
Consumer Protection
And Competition
Act of 1992-Direct
Broadcast Satellite
Service ObligationsComments of Morality In Media, Inc.

Direct-to-Home Broadcast Satellite (DBS) is based on high power, direct broadcast satellites which receive signals from earth and transmit them to homes equipped with small, relatively inexpensive, receiving antennas.

Such direct broadcasting by television requires that the TV signal be transmitted by an earth station (Uplink) to a Satellite (receiver, amplifier and converter) and then beamed directly to the Home Antenna. There are no wires involved in (DBS) such as in cable.

The 1992 Cable Act contains Section 25, although cable is not involved probably because the cable companies had previously utilized satellites to import distant signals and had been prominent in that field or because the Act was used by Congress as a "hook" for this purpose.

While the satellite itself could be regarded as a common carrier, the activity involved (bouncing a signal off a transponder for direct relay to homes) all begins with someone broadcasting by means of radio transmission in a continuous stream. It differs not in the essence from conventional TV and radio broadcasting. We draw your attention to Section 3 of the Communications Act of 1934 as amended. We find there the following definition of Broadcasting meaning "The dissemination of radio communications intended to be received by the public directly or by the intermediary of relay stations." It also provides that "A person engaged in radio broadcasting shall not insofar as such person is so engaged, be deemed a common carrier". The term 'radio communication'...means the transmission by radio of writing, signs, signals, pictures and sound of all kinds, including all instrumentalities, facilities, apparatus and services (among other things, the receipt, forwarding, and delivery of communications) incidental to such transmission".

Of course, "Radio Communication" includes TV (Allen B. Dumont Laboratories v. Carroll, 184 F. 2d 153 (3rd Cir. 1950)).

From this exposition it is clear that Direct Broadcast Satellite radio or TV transmission is "radio broadcasting" when considered as an amalgam consisting of the Uplink (transmitting earth station) Satellite and Downlink to (home antenna and receiver). If this is so, persons who send up the signal from the earth station are broadcasters and subject to

all the statutes and regulations governing broadcasters found in the Communications Act, the Rules and Regulations of the FCC and other laws pertaining thereto. There is one thing that is for sure and that is that DBS is not a "cable system" or a cable service (See Section 602 of the Communications Act), since that term does include "a closed transmission path" and does not include "A facility that serves subscribers without using any public right of way". The District Court of the District of Columbia in Daniels Cablevision Inc. v. U.S. (835 F. Supp. 1 at 8) (overruled on other grounds) recognizes that cable companies are not DBS Service Providers and also recognizes that such services are not sent to the home "over coaxial cable strung along public rights of way". It is crystal clear that the Downlink is broadcasting by itself (cf. Station Representatives Report, November 1980, page 41). It is, today, no longer simply a "common carrier".

Now, Section 335 of the Communications Act (as added by the laws of 1992) speaks of the FCC imposing on providers of direct broadcast satellite service, public interest or other requirements for providing video programming. In view of this mandate and in view of the above exposition, Morality In Media holds that the FCC should take the opportunity offered by Congress to impose the following requirements as obligations of Direct Broadcast Satellite Service Providers:

1. No Direct Broadcast Satellite Service provider, nor any other person, shall, by means of Direct Broadcast Satellite signals, pictures, sounds or programming; (a) utter any obscene indecent or profane language that is in violation of 18 USC

1464 or (b) utter any obscene matter or distribute any obscene matter (including the use of wire microwave or satellite) in violation of 18 USC 1468 or (c) transport or ship in interstate commerce by any means material involving the sexual exploitation of minors in violations of 18 USC 2252.

2. Any violation of paragraph 1 shall be subject to the sanctions provided by 312 and 503 of the Communications Act.

It is noted that pay-per view and subscription services, may, in some circumstances, possibly be found not to be in violations of 18 USC 1464's indecenty provisions if not obscene and ordered by consenting adults.

Since this proceeding will be handled by the International Bureau and the Public Notice requests comments on the "international ramifications" of any "public interest obligations", we deem it appropriate to comment on said international ramifications. In a sense, the "public interest" in reference to DBS (since it has international ramifications) refers to the "public interest" of all members of the public" (whether domestic or international) who will receive the service. That public interest is inextricably connected to the public morality and culture of countries other than our own. Congress, recognizing the potential reach of DBS, obviously intended that the phrase "public interest" have a dominant U.S. element with an admixture of the interest of the public into whatever country the DBS signal or picture is beamed. This being so, it is important that the FCC recognize this fact and fulfill the mandate of Congress to impose obligations on DBS to accommodate the same. Morality

In Media, therefore proposes the imposition of the following obligation on DBS persons providing the programming:

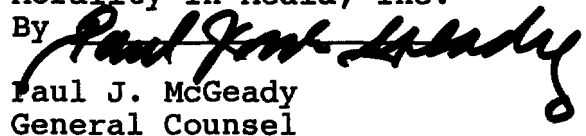
3. Direct Broadcast Satellite providers and other persons, utilizing such broadcasting, shall, in observing the requirement of avoiding obscene, indecent or profane satellite broadcasting, observe the laws of the United States and of other countries in which the programming is received.

It is also to be noted that the cases construing Section 605 have no application to DBS. Those cases recognize that, for purposes of 605, the usual definition of broadcasting does not apply. We are not dealing here with 605 but with a phenomenon that meets the definition of broadcasting which is not encumbered with 605 language. The mere fact that a different form of antenna is involved does not change that definition. At all events, for purposes of the quoted criminal statutes it is broadcasting. The fact that there may be some sort of fee involved to received the signals (if any) does not change anything. These signals are intended to be received by the "public". The definition does not refer to the "general public" as in 605.

Respectfully submitted,

Morality In Media, Inc.

By


Paul J. McGeady
General Counsel

Dated: April 7, 1997